

<b>Title:</b> Extending the Freedom of Information Act to Network Rail  <b>IA No:</b> MoJ044/2014  <b>Lead department or agency:</b> Ministry of Justice  <b>Other departments or agencies:</b> Department for Transport	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 08/01/2015		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary legislation		
<b>Contact for enquiries:</b>			
Oliver Lendrum Oliver.Lendrum@justice.gsi.gov.uk			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> Not Applicable

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out? Measure qualifies as
-£7.4m	N/A	N/A	No NA

**What is the problem under consideration? Why is government intervention necessary?**

The Freedom of Information Act (FOIA) gives any person the right to be told whether information is held by a public authority and as well as the right to have access to it. Coverage is limited to bodies listed in Schedule 1 to the FOIA, those who meet the relevant criteria of section 6, or which have been designated as public authorities through an order under section 5. Parts of Network Rail have been identified as exercising functions of a public nature and therefore would meet the criteria for inclusion through section 5. Government intervention will aid transparency in relation to the key public functions that Network Rail performs and so that it is subject to the same scrutiny as other public sector organisations.

**What are the policy objectives and the intended effects?**

The intended effect is to ensure greater accountability in relation to the key public functions Network Rail performs in relation to the rail network in England, Wales and Scotland. There is a strong case for the extension of the FOIA to bodies which exercise functions of a public nature. The case is particularly strong in relation to a provider which impacts on the public to the extent that Network Rail does, especially following its reclassification to the public sector. Providing a legal right under the FOIA to access the information Network Rail holds in relation to those functions will help it be open, transparent and accountable.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 0: Do nothing: retain the current coverage of FOIA (base case)  
 Option 1: To extend the scope of the FOIA to cover those companies within Network Rail exercising public functions in relation to those functions.

Option 1 is the preferred option as this would provide the public with the right of access to information provided by the FOIA. The Secretary of State's view is that a number of companies within Network Rail exercise functions of a public nature and should therefore be subject the FOIA. The companies identified are Network Rail Limited, Network Rail Holdco Limited and Network Rail Infrastructure Limited.

<b>Will the policy be reviewed?</b> It will not be reviewed. <b>If applicable, set review date:</b> N/A					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No
				<b>Large</b> Yes	
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)				<b>Traded:</b> N/A	<b>Non-traded:</b> N/A

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister: \_\_\_\_\_ Simon Hughes \_\_\_\_\_ Date: \_\_\_\_\_ 08/01/2015 \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** To extend the scope of FOIA to include certain companies within Network Rail

## FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£10.7m	High: -£5.9m	Best Estimate: -£7.4m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	£0.68 million	£5.9 million
High	N/A	£1.23 million	£10.7 million
Best Estimate	£0.39m	£0.85 million	£7.4 million

### Description and scale of key monetised costs by 'main affected groups'

Transition costs to Network Rail in Q1 2015 are expected to be £394,000, driven by:

- Cost of Seconded Staff and Recruitment Costs - £80,000;
- Training and communication costs for seconded and new permanent staff - £148,000;
- System Development costs (excluding on-going license costs) - £62,000; and,
- Legal Costs of £104,000.

Ongoing annual costs for responding to requests and any internal reviews are estimated to be £1.13m in the first calendar year, then £0.82m annually (in 2015 GBP).

### Other key non-monetised costs by 'main affected groups'

There will be ongoing costs to the Information Commissioners Office ("ICO") from enforcing proper application of the FOIA and should there be an increased number of appeals. There will also be costs to the First Tier Tribunal (Information Rights), Upper Tribunal, and the higher courts, and possibly to the wider public sector from additional follow-up FOIA requests. Network Rail will also incur costs for cases that are referred to the ICO and further appeal stages and from Subject Access Requests (SARs).

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

### Description and scale of key monetised benefits by 'main affected groups'

N/A

### Other key non-monetised benefits by 'main affected groups'

Extending the FOIA is intended to increase the efficiency, accountability and openness of Network Rail which will benefit society. Providing the public with a legal right of access to information could lead to greater scrutiny and accountability, increased awareness and greater confidence in Network Rail. Other organisations currently within the scope of the FOIA who cover similar areas to Network Rail (such as DfT and the ORR) may receive fewer requests if these are instead directed to Network Rail, although the net impact of this is unclear.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

- It is difficult to predict with certainty the number of requests Network Rail would receive. The volume is expected to be high in the first year before falling back and then increasing gradually again or remaining fairly constant. There are substantial risks that the volume of requests, and therefore costs, could be very different. The above figures should be viewed as illustrative and driven by assumptions.
- The costs of time taken to respond the FOIA requests are drawn from figures based on information from central government departments. These are generally higher than those from other bodies. Therefore there is a risk that the costs outlined could be different to those anticipated.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	NA

# Evidence Base (for summary sheets)

## 1) Introduction

- I. This Impact Assessment examines the impact of extending the scope of the Freedom of Information Act 2000 (FOIA) to those companies within Network Rail identified above as exercising “functions of a public nature” in relation to those functions. The FOIA contains a provision (under section 5) for the Secretary of State to bring within the scope of the FOIA bodies that appear to him to exercise functions of a public nature or who are providing a service under contract that is a function of a public authority. In this case, it is the power in section 5(1)(a) to extend the FOIA to a body performing functions of a public nature in relation to those functions that is of relevance. Section 7(5) of the FOIA states that the functions of the public authority being designated under section 5 must be specified in an order for all Parts of the FOIA to apply, and that they will not apply to any function not specified.

## 2) Background

- I. The Government is committed to facilitating greater openness and transparency in order to enable the public to hold public bodies to account. The Coalition Agreement contains a commitment to extend the scope of the FOIA to provide greater transparency. Since May 2010 this pledge has been met by the extension of the FOIA to academies, more than 100 companies wholly owned by more than one public authority, to the Association of Chief Police Officers (ACPO), Financial Ombudsman Service (FOS), and Universities and Colleges Admissions Service (UCAS) in relation to functions of a public nature that they perform. Extending the FOIA to Network Rail in relation to its public functions is the next step in this process.
- II. To extend the scope of the FOIA the Secretary of State makes a designation by what is called a section 5 Order. A section 5 Order must specify the functions or services provided under contract for which that public body is designated. The Act would not apply to any other information held which does not relate to a function specified in the section 5 Order; this means that there may be occasions where not all the work carried out by an organisation is covered. By contrast, there will also be organisations where all of their functions could be subject to FOIA requests.

## 3) Matter under consideration

- I. The Government deem it time to extend the scope of the FOIA to Network Rail because of the key public functions it fulfils in maintaining and facilitating the operation of the national rail infrastructure, and the strong public interest in greater accountability and openness in relation to these activities. The case for including Network Rail now is strengthened by its reclassification to the public sector from 1 September 2014. The Secretary of State considers that some companies within the Network Rail satisfy the requirements of section 5 of the FOIA to enable their inclusion by this route in relation to their public functions. The Government believes that there is a strong case for bodies who exercise functions of a public nature being subject to the same scrutiny as public authorities already subject to the FOIA. This is essential in providing more open, transparent and accountable bodies. The FOIA provides the public with the right of access to information and as Network Rail is considered by the Government to exercise functions of a public nature the public should be provided with that legal right.
- II. Government officials, Network Rail and the Department for Transport have worked together to consider which of Network Rail’s functions are of a public nature and which companies within Network Rail perform them.

## 4) Rationale for intervention

- I. The conventional economic approach to government intervention to resolve a situation justifying change based on efficiency or equality arguments. It is considered that some parts

of Network Rail exercise key functions of a public nature although not currently subject to the FOIA. It is considered that there is a strong case for organisations that exercise such functions of a public nature being within the scope of the FOIA.

- II. Extending the coverage of the FOIA will give the public greater access to information about services that affect them. This may provide greater public confidence in the functions they perform or public services they provide. In turn this may generate welfare benefits if Network Rail operates more closely in line with the preferences of society.
- III. There is also the argument that Network Rail is already promoting transparency by publishing data proactively and dealing with information requests on an informal basis. To bring it within the scope of the FOIA in relation to its public functions builds on this process by establishing a legal requirement to provide information and a binding redress mechanism for those who are dissatisfied.

## **5) Policy Objective**

- I. The main objective of the FOIA is to increase the openness, transparency and accountability of those bodies covered by the FOIA. The Government considers that the right to information:
  - Provides more information about how taxpayers' money is spent;
  - Enables greater scrutiny of public services and allows the public to gain information about services that affect them;
  - Provides the context for better informed public debate;
  - Holds bodies to account for decisions that affect the public

## **6) Description of options considered**

- I. Option 0: "Do nothing"

If no action was taken then Network Rail would continue to be exempt from the provisions of the FOIA and the public would have no enforceable general right to the information they hold despite the fact that Network Rail exercises functions of a public nature. Network Rail currently has a commitment to transparency and provides responses to information requests outside the scope of the FOIA, but has had no legal obligation to do so. The number of requests received per annum is substantially lower than would be expected should the FOIA be extended. The current caseload dealt with by NR is around 600 requests per annum.

- II. Option 1: Extend the Freedom of Information Act to those companies within Network Rail exercising functions of a public nature in relation to those functions

Some companies within Network Rail have been identified as carrying out functions of a public nature capable of being included by an order under section 5. These functions relate to the delivery of network, station and light maintenance services. There is a strong case for the increased transparency that designation under the FOIA would achieve, and it is in the public interest that it should be subject to the provisions of the FOIA. The extension of the FOIA will not cover Network Rail's purely commercial functions or companies with no public functions.

## **7) Monetised and non-monetised costs and the benefits of each option**

- I. This Impact Assessment identifies both monetised and non-monetised impacts from society's perspective with the aim of understanding what the net social impact might be from implementing these options. The costs and benefits of the option are compared to the "do nothing" option.

There are several data sources that have been considered to estimate the likely cost implications of extending the FOIA to Network Rail. These include:

- a. An investigative report by Ipsos MORI in 2012 to inform the FOIA post legislative review<sup>1</sup>.
- b. A report by Frontier Economics produced in 2006 on the impact of the FOIA<sup>2</sup>.
- c. Network Rail has also estimated staff and systems costs associated with hiring information officers to process FOI requests based on the volume of FOI requests received by various other government organisations, such as Transport for London, the Ministry of Defence, and the Department for Welfare and Pensions, among others.
- d. Annual statistics collected on implementation in central government of the FOIA and post implementation reports from ACPO, FOS and UCAS after the FOIA was extended to these bodies.

On the basis of the Ministry of Justice's own calculations, it is expected that Network Rail will receive between 3600 and 5600 requests per annum in steady state, based on requests received for central government departments in 2013<sup>3</sup>. As with other departments at the introduction of the FOIA, we expect this number to be inflated by 17%<sup>4</sup> in the first 9 months (Q2-4 2015).

In conducting the cost benefit analysis, we have considered the effects of each policy option over a 10-year period. In order to estimate costs over this period we have used the 3.5% social discount rate (taken from the Treasury's Green Book<sup>5</sup>). Further assumptions and risks can be found in section 8.

## II. Option 0: "Do Nothing"/Base Cost

Under the "do-nothing" option the FOIA would not be extended to include Network Rail.

Without the extension of the FOIA to Network Rail, it is unlikely that any substantial rise to the number of FOI requests received by central government bodies (the number of FOI requests rose by 4.5% from 2012 to 2013) will be associated with the reclassification of Network Rail as a Public Body. However, there is a risk that other similar bodies such as DfT and ORR, which are already covered by the FOIA, may continue to receive requests that would otherwise be directed to Network Rail.

If no action is taken then Network Rail, which was reclassified as a public body sector as of 1<sup>st</sup> September 2014<sup>6</sup>, would continue to be exempt from the provisions of the FOIA and the public would have no enforceable general right of access to the information they hold in relation to those functions. Network Rail would continue to operate their current transparency policy of publishing "Transparency Datasets", as well as offering real time data feeds and responding to information requests on an informal basis outside the scope of the FOIA, at an estimated annual cost of £250,000 per annum<sup>7</sup>. To model the expected costs of the extension of the FOIA, the figures taken from the Ipsos MORI report relating to the cost per unit of FOI requests and internal reviews have been inflated in-line with the 1% average pay rise to the public sector originally announced in the 2011 autumn statement<sup>8</sup>, to reach £188 and £183 respectively. Based 600 ad-hoc information requests a year at a cost of £188 per request, it is

<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/217390/investigative-study-informing-foia.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217390/investigative-study-informing-foia.pdf)

<sup>2</sup> <http://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/foi/reference/foi-independent-review.pdf>

<sup>3</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/305525/foi-act-2000-statistics-implementation-in-central-government-2013-q4-annual.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/305525/foi-act-2000-statistics-implementation-in-central-government-2013-q4-annual.pdf)

<sup>4</sup> Based on FOIA statistics from UCAS and ACPO, these organisations received an estimated combined 368 FOI requests for the nine months of November 2011-August 2012, compared to a combined 314 FOI requests for the nine months January 2012-September 2012.

<sup>5</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/220541/green\\_book\\_complete.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220541/green_book_complete.pdf)

<sup>6</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/349439/framework-agreement.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/349439/framework-agreement.pdf)

<sup>7</sup> Cost sourced from Network Rail (December 2014).

<sup>8</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228671/8231.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228671/8231.pdf)

estimated that £113,000 per annum is currently spent by Network Rail on fulfilling FOI-equivalent requests. We assume no Internal Reviews in the base case.

Network Rail is likely to attract public criticism for not being sufficiently open, transparent and accountable as there would be no enforceable right to information available. Likewise, the Government may continue to attract criticism for failing to make sure that Network Rail is subject to the FOIA, especially given reclassification. In addition, there is a risk that members of the public would lose confidence in public services if they are unable to obtain information that they are interested about or in services that affect them.

The “do-nothing” option is compared against itself and therefore its costs and benefits are necessarily zero, as is its net present value (NPV)<sup>9</sup>.

### III. **Option 1: Extend the Freedom of Information Act to include Network Rail**

This option is to bring some of the companies within Network Rail inside the scope of the FOIA through a section 5 order. Section 5 of the FOIA enables the Secretary of State to make an order to include persons or offices within scope of the FOIA that he believes are exercising functions of a public nature or who are providing under contract with a public authority a function of that authority. In this case, it is the power in section 5(1)(a) to extend the FOIA to a body performing functions of a public nature in relation to those functions that is of relevance.

This impact assessment assesses the potential impact of bringing these companies within the FOI regime in relation to those functions of a public nature that they exercise. These companies will be required to abide by the terms of the FOIA, namely to comply with requests for information from members of the public for official information they hold within 20 working days, subject to any permitted extension, or application of any exemptions or procedural grounds for refusing.

In addition, once covered by the legislation, Network Rail would need to comply with section 19 of the FOIA and adopt and maintain a publication scheme. Section 19(2) of the Act lists the requirements of a publication scheme, which must:

- a) Specify classes of information which the public authority publishes or intends to publish;
- b) Specify the manner in which information of each class is, or is intended to be, published; and
- c) Specify whether the material is, or is intended to be, available to the public free of charge or on payment.

#### **1. Transitional Costs**

In order to calculate further transitional costs that Network Rail will incur, we have estimated the average time in work-hours that would be spent to prepare for inclusion within the FOIA based on departmental experience and information from Network Rail. Network Rail estimate that they have spent £472,000 between June 2014 and January 2015 in preparation for implementation. These are considered as sunk costs and are not included in the appraisal period.

#### **Systems costs**

When the companies have been brought within the FOIA, Network Rail will be required to ensure that they have in place suitable systems to log, allocate and respond to requests for information. They would also need to ensure that the appropriate appeals processes are in place if requesters are not content with the responses that they receive. Based on budget

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<sup>9</sup> The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

projections from Network Rail, it is expected that they will spend £60,000 between 3<sup>rd</sup> January 2015 and 31<sup>st</sup> March 2015 developing a bespoke case management system.

We estimate that it will take 1 Band 4 member of staff 2 working weeks (10 days) to further prepare the FOI case management IT system to produce necessary publications and respond to requests, at a cost of £1,700 in full-time equivalent (FTE) work hours. The cost of software licenses has been included in the ongoing costs.

### **Hiring costs**

In order to prepare for the implementation of the FOIA, Network Rail has a team of programme staff on secondment from elsewhere within the organisation. At a staffing cost of £83,000 in Q1 of the 2015 calendar year. Legal Resources have also been seconded from Bond Dickenson LLP, at an estimated cost of £104,000.

To respond to the increase in information requests brought on by the extension of the FOIA, it is anticipated that Network Rail will be required to hire 20 new members of staff of varying professions. Based on estimates from Network Rail, it is expected that this will incur one off cost from recruitment campaigns and cost of staff time of £20,000.

### **Training costs**

The cost of training and communications associated with bringing staff from elsewhere in Network Rail on secondment in order to prepare for the implementation of the FOIA has been forecasted at £40,000 per month. This equates to £120,000 between 1<sup>st</sup> January and 31<sup>st</sup> March 2015.

They would also need to ensure that the new members of staff have the appropriate training. It is expected that it will take each member of staff 5 days (one work week of 37 hours) to train to respond to requests and operate these systems. Based on provided earnings figures<sup>10</sup>, it is expected that the transitional cost to Network Rail will be £21,000. Network Rail estimate that ongoing training will cost in the region of £10,000 per annum.

## **2. Ongoing costs**

It is assumed that all ongoing costs would be incurred from the 2015 calendar year onwards, with the policy being implemented from April 2015. In addition to the one-off transitional costs, Network Rail will also incur ongoing costs relating to receiving and responding to requests.

The Ministry of Justice currently publishes FOI statistics on a range of monitored public bodies<sup>11</sup>. Following discussions with Network Rail and based on judgement formed by MoJ officials, bearing in mind the potential level of public interest in the nature of Network Rail as well as the level of uncertainty surrounding number of requests, three proxy departments have been chosen in order to estimate the volume of requests that will be received annually based on similarities in size and public exposure. These are the Department for Transport (DfT), the Ministry of Justice (MoJ) and the Department for Work and Pensions (DWP). The volume of requests and internal reviews for these departments in 2013 follow a wide range in order to account for the uncertainty in the final number of requests, and are as follows:

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<sup>10</sup> Figures provided by Network Rail for the overall annual cost of £950,000 for 1x Band 2, 3x Band 3, 2x Band 4, 12x Band 5 and 2x Band 6 staff, including uplift to account for national insurance and superannuation costs. Further available in Section 8 (Set-up Costs).

<sup>11</sup> A total of 41 central government bodies are monitored including all government departments.

**Table 1: Freedom of Information requests and internal review volumes (2013)<sup>12</sup>**

	Freedom of Information Requests	Internal Reviews
Department for Work and Pensions	5600	850
Ministry of Justice	4300	270
Department for Transport	3600	120

### Ongoing IT and system costs

In addition to the cost of dealing directly with requests, Network Rail may face other associated costs. One such cost could result from increased public scrutiny and pressure for the organisation to practice better data management. This will include the cost of reviewing and updating IT and administrative systems. Network Rail has pre-emptively estimated an increased cost to systems of £46,000 per annum, based on the cost of software licensing and IT support.

### First year mark-up

It is expected that there will be a temporary increase in requests when the FOIA is first extended, as was the case when it was first introduced to the central departments in 2005<sup>13</sup>. It is considered, however, that in the first reporting period in 2005 numbers were artificially high (numbers halved by the second quarter of 2005), as the initial peak in interest was supplemented by the fact that in the first FOI statistics report, all routine requests for information were recorded as an FOI request, whilst in subsequent reporting periods only 'non-routine' requests are recorded. Whilst it is generally accepted that the real volume was higher than could be expected in steady state, there is no information to suggest how much was due to a genuinely high demand and how much was due to a lack of official reporting methodology. Based on experience of Network Rail and Ministry of Justice officials, an estimated increase of 17% is used for the first nine months after implementation in the cost modelling.

### General costs

Ipsos MORI in their 2012 report<sup>14</sup> on the cost of the FOIA estimated that the average request to a central government department takes 6 hours 10 minutes to complete, at a cost of £184, with the average cost of an internal review being £179. These costs only take into account work hours and total salary costs. To model the expected costs of the extension of the FOIA, these figures have been inflated in-line with the 1% average pay rise to the public sector originally announced in the 2011 autumn statement<sup>15</sup>, to reach £188 and £183 respectively.

Combining this with the volumes estimated and all other costs leads to an estimated annual cost to the organisation of between £650,000 and £1,210,000 per annum in 2015 prices at steady state, with a further 17% uplift for the first nine months (Q2-4 of the 2015 calendar year). The majority of these costs will be borne exclusively by Network Rail. When calculating the total cost, the £113,000 per annum currently spent on FOI-equivalent requests was subtracted to represent this base cost. These can be seen below in tables 1 and 2.

As part of its request handling, Network Rail is likely to wish to consult other parties about requests for information relating to them. Such consultations are best practice recommended

<sup>12</sup> [http://ico.org.uk/about\\_us/performance/~//media/documents/library/Corporate/Research\\_and\\_reports/annual-report-2013-14.pdf](http://ico.org.uk/about_us/performance/~//media/documents/library/Corporate/Research_and_reports/annual-report-2013-14.pdf)

<sup>13</sup> This "spike" can be seen in all annual or quarterly FOI statistics bulletins.

<sup>14</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/217390/investigative-study-informing-foia.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217390/investigative-study-informing-foia.pdf)

<sup>15</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228671/8231.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228671/8231.pdf)

in the Code of Practice issued under section 45 of the FOIA. Third parties are likely to incur some costs as a result, depending on the number of relevant requests received and the extent of the consultation process.

In order to meet this increase in workload, Network Rail intends to hire up to 20 new permanent members of staff in order to deal with the expected volume of Freedom of Information requests, at a cost of £950,000 per annum in 2015 prices (£1,000,000 after the IT and system costs. This staff commitment coincides with the cost estimates based on the central to upper bound derived from the Ipsos MORI report (if the base cost reduction is excluded), and Network Rail have indicated that reassignments or further recruitment of both fixed-term and permanent staff would be considered should a change in workload necessitate it. These have been used to estimate between 5000 and 6000 requests per annum by Network Rail.

**Table 2: Expected cost in Year 1 (2015) including additional Transitional Costs**

Total Cost (Year 1 Only)	Volume	Cost per Unit	Total Cost	
Upper Bound	<b>Total Cost:</b>		<b>£1,460,000</b>	
	- Seconded Staff	N/A	£60,000.00	
	- Legal Costs	N/A	£104,000.00	
	- Freedom of Information Requests	4922	£188	£920,000
	- Internal Reviews	747	£183	£136,000
	- System Costs*	N/A	N/A	£108,000
	- ICO Appeals	59	£755	£45,000
	- Training Costs	N/A	N/A	£151,000
	- Recruitment Costs	20	£1,000.00	£20,000
	- Less Base Costs	450	£188	<b>-£84,000</b>
Central Bound	<b>Total Cost</b>		<b>£1,130,000</b>	
	- Seconded Staff	N/A	£60,000.00	
	- Legal Costs	N/A	£104,000.00	
	- Freedom of Information Requests	3780	£188	£710,000
	- Internal Reviews	237	£183	£43,000
	- System Costs*	N/A	N/A	£108,000
	- ICO Appeals	20	£755	£15,000
	- Training Costs	N/A	N/A	£151,000
	- Recruitment Costs	20	£1,000.00	£20,000
	- Less Base Costs	450	£188	<b>-£84,000</b>
Lower Bound	<b>Total Cost</b>		<b>£980,000</b>	
	- Seconded Staff	N/A	£60,000.00	
	- Legal Costs	N/A	£104,000.00	
	- Freedom of Information Requests	3164	£188	£590,000
	- Internal Reviews	105	£183	£19,000
	- System Costs*	N/A	N/A	£108,000
	- ICO Appeals	11	£755	£8,000
	- Training Costs	N/A	N/A	£151,000
	- Recruitment Costs	20	£1,000.00	£20,000
	- Less Base Costs	450	£188	<b>-£84,000</b>

Figures may not sum due to rounding.

**Table 3: Expected constant price annual costs Years 2-10 (2016 - 2024)**

Nominal Annual Cost (Years 2-10)	Volume	Cost per Unit	Total Cost	
Upper Bound	<b>Total Cost:</b>		<b>£1,210,000</b>	
	- Freedom of Information Requests	5600	£188	£1,050,000
	- Internal Reviews	850	£183	£155,000
	- System Costs	N/A	N/A	£46,000
	- Training Costs	N/A	N/A	£10,000
	- ICO Appeals	78	£755	£59,000
	- Less Base Costs	600	£188	<b>-£113,000</b>
Central Bound	<b>Total Cost</b>		<b>£820,000</b>	
	- Freedom of Information Requests	4300	£188	£810,000
	- Internal Reviews	270	£183	£49,000
	- System Costs	N/A	N/A	£46,000
	- Training Costs	N/A	N/A	£10,000
	- ICO Appeals	26	£755	£20,000
	- Less Base Costs	600	£188	<b>-£113,000</b>
Lower Bound	<b>Total Cost</b>		<b>£652,000</b>	
	- Freedom of Information Requests	3600	£188	£680,000
	- Internal Reviews	120	£183	£22,000
	- System Costs	N/A	N/A	£46,000
	- Training Costs	N/A	N/A	£10,000
	- ICO Appeals	14	£755	£11,000
	- Less Base Costs	600	£188	<b>-£113,000</b>

Figures may not sum due to rounding.

### 3. Subject Access Requests

Network Rail may also incur costs as they have additional obligations under the Data Protection Act 1998 (DPA) in relation to subject access requests (SAR). For bodies not subject to the FOIA, the DPA covers electronic data and manual (non-electronic) data in certain filing and record keeping systems. As a result of FOIA designation, Network Rail may need to search more widely when responding to SARs as the FOIA brings manual data within scope regardless of how the filing or record keeping system containing the data is organised.

Under a SAR, a data subject (individual) has the right to request a copy of all information an organisation holds on them. Organisations may charge up to £10 per standard request, or £50 for requests relating to health and education records. In 2012, the cost of responding to a SAR was estimated at £50-£100<sup>16</sup> in addition to the cost of processing the fee, which is assumed to offset the fee itself. Network Rail currently receive around 180 SARs per annum, it is unknown whether this number will increase substantially, or whether the nature of the SARs received will change.

Network Rail may also incur additional costs if they are required to search more widely to look for information pursuant to SARs than they would under the DPA alone, although initial reports from ACPO and UCAS after the extension of the FOIA to these bodies offer no evidence to support this. These costs have not been quantified due to a lack of associated data.

### 4. Costs to the ICO of appeals

The Information Commissioner would continue to enforce the proper application of the FOIA and ensure the bodies that come within it comply. The Information Commissioner is the independent regulator of the FOIA and may issue decision, information and enforcement

<sup>16</sup> <https://consult.justice.gov.uk/digital-communications/data-protection-proposals-cfe/results/eu-data-protection-reg-impact-assessment.pdf>

notices about an organisation's request handling that they would need to comply with. An appeal may be brought before the Information Commissioner's Office (ICO) if there is reason to believe that a public body has not complied with its obligations under the FOIA. Since the Information Commissioner would be required to ensure that more bodies are complying with the FOIA if more are brought within the scope of the Act, it would likely incur additional costs from any further appeals that derive from this.

Based on figures from the ICO's annual report<sup>17</sup>, 5,300 Freedom of Information request appeals were considered and concluded in the 2013/14 financial year, on a budget of £4m. This suggests average cost of an appeal to the ICO in 2013/14 was £754. Using the same proxy departments for the number of appeals expected, in 2013 there were between 16 and 82 appeals made to the ICO relating to the refusal of information requests by the bodies selected for our lower, central and upper bounds<sup>18</sup>, which for the central bound (27, in this case DWP) equates to 2% of all requests fully refused by the department, and 0.5% of all requests that they received. Based on this, we expect a further cost of £20,000 per annum, borne by the ICO.

## **5. Costs to HM Courts & Tribunals of Appeals**

If a person wanted to appeal the decision of the ICO, that person would normally have to make an appeal firstly to the First-Tier Tribunal (information rights), next to the Upper Tribunals, and finally to the higher courts. There may be additional costs if a higher volume of appeals go to these bodies. However there are currently over 100,000 bodies covered by the FOIA and in comparison only three companies, acting as a single body for FOI purposes, is to be brought within the Act. The expected volume of appeals against an ICO ruling will be a fraction of the number of ICO appeals.

## **6. Costs to requestors**

There are no charges for making an FOI request but those making a request may incur costs associated with the time taken to make the request and costs of communicating the request (eg. postage). In all cases, these are expected to be negligible, as the monetised costs can often be circumvented, e.g. postage costs can be circumvented via the use of email.

## **7. Benefits**

### Benefits to Society

Extending the coverage of the FOIA to Network Rail will give the public a legally enforceable right to access to information as provided for by the FOIA. This may provide greater access to official information about services that affect the public and in which there is public interest. Coverage by the FOIA ensures greater public scrutiny (including from private individuals, journalists and businesses) towards these bodies that exercise functions of a public nature, which are brought within scope.

The inclusion of Network Rail within the FOIA in relation to its public functions is expected to increase their accountability, transparency and openness for the following reasons:

1. The FOIA will provide the public with an enforceable right of access to information held by Network Rail;
2. Inclusion within the FOIA is likely to mean more people make requests for information;
3. Under the FOIA Network Rail will be required to adopt and maintain a publication scheme;

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<sup>17</sup> [http://ico.org.uk/about\\_us/performance/~/\\_media/documents/library/Corporate/Research\\_and\\_reports/annual-report-2013-14.pdf](http://ico.org.uk/about_us/performance/~/_media/documents/library/Corporate/Research_and_reports/annual-report-2013-14.pdf)

<sup>18</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/305530/foi-statistics-2013-q4-annual-tables.xls](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/305530/foi-statistics-2013-q4-annual-tables.xls)

4. The FOIA was intended to increase transparency and the coalition agreement recognises that extending the scope of the FOIA will increase transparency.

Benefits to bodies brought within the scope

The proposal may also generate efficiency benefits if the increased scrutiny provided by the FOIA leads to those organisations that are brought into scope operating more efficiently. It is expected that as a result of increased public scrutiny the bodies brought within the scope of the Act will themselves become more efficient and effective, for example by reducing duplication of requests through publications and the use of a bespoke system, and realise consequential cost savings.

Benefits to bodies already within the scope

Bringing the bodies outlined above within the scope of the FOIA could reduce the number of requests that bodies already covered by the FOIA receive. This might be the case if FOI requests are directed towards a body brought within scope of the FOIA rather than towards other organisations who are already within scope that could cover the same data, in this case, DfT and the ORR. Some bodies may therefore benefit from a subsequent cost saving. However, the overall impact on the volume of requests received by organisations already within scope is unclear.

**8) Risks and assumptions**

Area	Assumption	Risks
<b>Appraisal period</b>	<b>A 10 year appraisal period has been used, in line with Green Book Guidance</b>	
<b>Transparency Team</b>	Network Rail currently employs a Transparency team to answer ad-hoc information requests. It is assumed that £113,000 of the £250,000 currently spent can be attributed to FOI-equivalent requests.	Network Rail currently spends £250,000 per annum on the transparency team, of which £113,000 is assumed to be spent on FOI-equivalent requests. Network Rail has indicated that it intends to maintain the transparency team in order to continue to pro-actively release data not covered by the FOI, however, if the team were to be fully absorbed by the FOI team, there could be potential further savings.  It is assumed that the volume of requests that the Transparency Team would otherwise receive would have remained constant over the period of this appraisal.
<b>Volume of requests year one</b>	It is assumed that there will be a 17% increase in FOI requests in the first 9 months after implementation (Q2-Q4 2015) compared to the steady state.	There could be a larger spike in year 1 than predicted which would lead to additional costs/pressure on NR resources.
<b>Volume of requests year one</b>	That the volume of requests that Network Rail will receive is between 3,600 and 5,600 in steady state.	Whilst the upper/central/lower cost bandings mitigate against the possibility of the uncertainty surrounding the possible volumes that Network Rail will receive, there is still the possibility that the request volume, and therefore cost, may be substantially higher or lower than the forecast.
<b>Cost per request</b>	Based on the 2012 Ipsos MORI report, the following costs have been estimated per request: <ul style="list-style-type: none"> <li>£188 per FOI request;</li> </ul>	<ul style="list-style-type: none"> <li>Costs per unit assume a 1% per annum average pay rise across Network Rail since 2012, and that the systems Network Rail put in place will be comparable to those of central</li> </ul>

	<ul style="list-style-type: none"> <li>£183 per internal review.</li> </ul>	<p>government bodies examined by Ipsos MORI in 2012.</p> <ul style="list-style-type: none"> <li>The organisations in the 2012 Ipsos MORI report had been subject to the FOIA since 2005, which means that they had had 7 years to develop their structure and systems. It is possible that initial costs per case to Network Rail could be higher during the transitional phases.</li> <li>It is recognised that due to the decentralised nature of Network Rail, it is possible that the handling of requests in the wider business could cost substantially more to fulfil. It is unknown how much this would influence the cost-per-case, and as such it has not been quantified.</li> </ul>
<b>Cost per request</b>	Salaries for Network Rail employees will remain constant in real terms over the next 10 years.	If Network Rail aligns with the government commitment of a 1% average rise in pay over the next 2 financial years, real pay will decrease, which will mean that the cost per-request will fall.
<b>Set-up Costs</b>	<p>The following assumptions have been made by departmental experts in the MOJ and Network Rail. A margin of uncertainty applies to these figures, which has not been calculated but which might not be insubstantial:</p> <ul style="list-style-type: none"> <li>Time taken to set up electronic systems – 2 FTE weeks;</li> </ul> <p>Time taken to train staff to respond to requests – 1 FTE week per member of staff.</p>	<p>We have estimated the costs of this based on the following annual earnings estimates, which have been adjusted for superannuation and National Insurance contributions:</p> <ul style="list-style-type: none"> <li>Band 2 - £100,000</li> <li>Band 3 - £70,000</li> <li>Band 4 - £50,000</li> <li>Band 5 - £40,000</li> <li>Band 6 - £30,000</li> </ul> <p>It has been assumed that system development would be carried out by a Band 5.</p>
<b>Set-up Costs</b>	The cost per weeks is calculated based on the average member of staff working 46 FTE work weeks, based on 7 bank holidays and 23 days annual leave.	The figure does not account for sick or special leave. There is the possibility that the actual cost to business of a FTE work week is higher when these are accounted for.
<b>Set-up Costs</b>	<ul style="list-style-type: none"> <li>Network Rail will develop a bespoke case management system to handle FOI requests.</li> </ul>	Costs could be higher if a more generic Case Management System is used to handle publications and requests.
<b>Set-up Costs</b>	No costs are associated with any potential further recruitment/redundancies that may need to be made once a steady-state has been reached.	<ul style="list-style-type: none"> <li>An estimated recruitment cost of £1,000 per person has been supplied by Network Rail. Cost of making staff redundant is not provided.</li> <li>There may be a cost associated with having too many or too few staff in itself.</li> </ul>
<b>Volumes</b>	The number of requests expected at each institution has been estimated by using data from similar monitored bodies, taken from the Ministry of Justice's annual reports on the FOIA.	It is unknown exactly how many FOI requests Network Rail will receive, and as such a wide volume range has been used (3,600 to 5,600 per annum). Network Rail bear a level of risk associated with the number of staff they choose to hire to deal with FOI requests.
<b>Volumes</b>	It is assumed that the volume of FOI requests that Network Rail receive will remain unchanged on a per-annum basis over the 10	Should the volume of requests increase or decrease over the appraisal period, the costs could change substantially.

	year appraisal period.	
<b>Costs to the ICO</b>	That the number of high-cost appeals to the ICO brought forward with the implementation of this policy will not be disproportionate from the average.	<ul style="list-style-type: none"> <li>There is scope for any particular case to cost significantly more than the average. Should the number of cases where the issues are significant enough to reach the upper tribunal or higher courts be disproportionately high, then the costs could be significantly higher, both for the ICO and Network Rail.</li> </ul>
<b>Rounding Convention</b>	<ul style="list-style-type: none"> <li>Values greater than £2m – Rounded to the nearest £100,000.</li> <li>Values greater than £500,000 – Rounded to the nearest £10,000.</li> <li>Values greater than £5,000 – Rounded to the nearest £1,000.</li> <li>Values less than £5,000 – Rounded to the nearest £1.</li> </ul>	

## 9) Direct costs and benefits to business calculations (following OITO methodology)

- I. It is not considered that these proposals would lead to any substantial direct costs to business other than those outlined in the main body of the Impact Assessment.

## 10) Wider impacts

### I. Equality

No adverse equality impact is anticipated and we expect a general positive equality impact as a result of a section 5 order, given that there will be a universal increase in transparency in relation to Network Rail's public functions.

### II. Competition

Network Rail is not in competition with any other bodies in relation to its public functions, although it does operate in a competitive environment in relation to other purely commercial activities falling outside the scope of the designation. It is solely responsible for managing and operating rail infrastructure across the UK, with the exception of Northern Ireland and the majority of the London Underground.

There should therefore be very little or no impact on competition where information is released by Network Rail about the Train Operating Companies and Freight Operating Companies who provide train services on the infrastructure that Network Rail operates, or about Network Rail's private sector delivery partners. This is because commercially sensitive information may be withheld under the Act where disclosure would at least be likely to be prejudicial, subject to the public interest test. Therefore it is unlikely that there would be a significant effect on competition.

### III. Small firms

It is not considered that any small firms would be directly impacted by the extension of the Act.

#### **IV. Carbon**

It is not considered that these proposals would lead to a significant change in carbon emissions.

#### **V. Environment**

It is not considered that these proposals would have any environmental impacts.

#### **VI. Health**

It is not considered that these proposals would have a significant impact on health.

#### **VII. Human rights**

It is not considered that these proposals would have any Human Rights implications.

#### **VIII. Justice**

The impact on the Justice System has been assessed in the main body of this impact assessment. The ICO would probably receive more appeals as a result of more bodies being brought within the Act. However, only a very small percentage of cases are appealed to the ICO so we do not expect the impact to be significant. The First Tier Tribunal (Information Rights), Upper Tribunal (Administrative Appeals Chamber), Court of Appeal and Supreme Court may also see an increased workload when appeals are taken beyond the ICO but again we would expect this to be minimal due to the limited number of cases that reach these stages.

#### **IX. Rural**

It is not considered that there would be any specifically rural impacts from the proposals.

#### **X. Sustainable Development**

Extending the FOIA would increase the openness, transparency and accountability of those organisations who exercise functions of a public nature. This should promote good governance due to increased public scrutiny and awareness of the decisions of these organisations. It would make organisations more efficient and allow the public to have access to the information about services that affect them which enables better informed public debate.

#### **XI. Privacy impact test (MOJ Specific)**

Having considered the privacy impact assessment screening questions we believe there will be no significant adverse impacts on privacy.

It is likely that requests for personal information will be received by Network Rail, either directly or indirectly. However, it is not expected that there will be any privacy impact as a result of the body coming within scope. This is because the Act provides an exemption against release for personal information (Section 40 FOIA). Accordingly, information such as information that is personal data of which the applicant is the data subject and personal data within the definition of data in the Data Protection Act 1998 (paragraphs (a) to (d), section 1(1)) where release would contravene the data protection principles is exempt from release.

## **11) Summary**

- I. The Coalition Government has committed to extend the scope of the FOIA to provide greater transparency. The benefits made available by the FOIA are non-monetised. It provides the public with a legally enforceable general right of access to information held by public authorities. Extending the FOIA is intended to increase the efficiency, accountability and openness of Network Rail which will benefit society. It will lead to greater scrutiny, increased awareness and greater confidence in Network Rail. Other organisations currently within the scope of the FOIA may also receive fewer requests if these are instead directed to Network Rail.
- II. It is estimated that this will lead to a further cost of between £5.9m and £10.7m over the next 10 years, with best estimates suggesting an expected £7.4m, using 2015 as the financial discount year.

Following consultation with Network Rail the Secretary of State's view is that three companies within Network Rail exercise functions of a public nature and therefore they should be brought within the scope of the Act and be subject to the same scrutiny as other public authorities. Accordingly, Option 1 is the preferred option to bring Network Rail within the scope of the Act. The benefits of Option 1 are considered to outweigh the costs.

## **12) Implementation**

- III. As mentioned above the Information Commissioner would enforce the proper application of the FOIA and ensure that the bodies that come within it comply. The Information Commissioner is the independent regulator of FOI and may issue Decision Notices about an organisation that they would need to comply with.